

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2020-224-C - ORDER NO. 2020-718  
DECEMBER 22, 2020

IN RE: Michael Madden, Complainant/Petitioner v.	)	ORDER GRANTING
Charter Spectrum (Charter Communications,	)	MOTION TO DISMISS
LLC) (Charter Fiberlink-SC CCO, LLC),	)	FOR LACK OF
Defendants/Respondents	)	JURISDICTION AND
	)	AUTHORITY IN THIS
	)	PROCEEDING AND ALL
	)	OTHER FILINGS

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Motion to Dismiss the Complaint of Michael Madden filed by Defendants/Respondents Charter Spectrum (Charter Communications, LLC) (Charter Fiberlink-SC CCO, LLC), hereinafter referred to as “Charter Spectrum” or the “Company”; the Motion to Amend Complaint filed by Michael Madden; and the Motion to Strike Complainant’s Surreponse and to Dismiss Amended Complaint filed by Charter Spectrum.

**II. FACTS AND PROCEDURAL HISTORY**

On September 2, 2020, Mr. Madden (“Complainant”) filed a Complaint with the Commission “concerning certain billing practices of Charter Spectrum and [t]he manner they gouge customers.” According to Complainant, his bill was reduced for one month after being told that the bill would remain consistent for at least the next year. After reviewing the new bill, Mr. Madden once again contacted Spectrum and was informed the

new increase would remain in effect until his July 2021 bill. Complainant asserts he would like to see truth and credibility in Charter Spectrum's billing practices and requests that the Commission investigate how Charter Spectrum can be allowed to violate its agreement with customers to uphold a certain term.

Charter Spectrum filed a Motion to Dismiss with the Commission on September 21, 2020, arguing:

- (i) **Charter Communications is not a regulated telecommunications carrier subject to the Commission's jurisdiction.**

Charter Communications is a cable operator and broadband communications service company providing video, internet, and voice services to customers through its affiliated corporate entities. However, Charter Communications, is not a regulated telecommunications utility subject to the Commission's jurisdiction. It is not identified as a regulated telecommunications entity by the S.C. Office of Regulatory Staff ("ORS"). Therefore, the Complaint must be dismissed as to Charter Communications.

- (ii) **Charter Fiberlink does not provide, and has not provided at any time relevant hereto, regulated utility services to the Complainant.**

Charter Fiberlink, an affiliate of Charter Communications, is identified by the ORS as a regulated telecommunications entity and is classified as an Interexchange Carrier/Long Distance Carrier (IXC). According to the Company, Charter Fiberlink has not provided, at any time relevant hereto, voice services to Mr. Madden. Charter Fiberlink is not a provider of video or internet services, and, in particular, does not provide Spectrum TV service, which is the subject of Mr. Madden's Complaint. Therefore, the Company asserts the Complaint must be dismissed as to Charter Fiberlink.

**(iii) The Commission lacks jurisdiction to regulate rates for Spectrum TV services, which forms the basis of the Complaint in this case.**

Mr. Madden purchases video, internet and voice services from Charter Communications. Spectrum TV or video services are provided to Mr. Madden by Spectrum Southeast, LLC, a provider of cable television services. Spectrum Voice services are provided to Mr. Madden by Spectrum Advanced Services, LLC, a provider of voice over internet protocol services.

Complainant seems to object to bill amounts that were higher than he expected them to be, and, in particular, an increase in his bill for the June 2020 billing period. Mr. Madden's March, April, and May 2020 bills each totaled \$155.77: \$53.97 for Spectrum TV, \$59.99 for Spectrum Internet, \$19.99 for Spectrum Voice, \$13.50 in other charges (including a broadcast TV surcharge), and \$8.32 in taxes, fees, and charges. However, for the June 2020 billing period, Mr. Madden was billed \$194.51: \$88.47 for Spectrum TV, \$59.99 for Spectrum Internet, \$19.99 for Spectrum Voice, \$13.50 in other charges (including a broadcast TV surcharge), and \$12.56 in taxes, fees, and charges.

The Company opines that the increase in the June 2020 bill catalyzed Mr. Madden's filing of this Complaint but asserts this increase was the result of a \$34.50 increase in his Spectrum TV service and the corresponding \$4.24 increase in taxes, fees, and charges. According to Charter Spectrum, the increased rate for Spectrum TV services in the June 2020 bill was caused by the expiration of a promotional discount. The Company states it offered Complainant other promotional discounts to lower his total bill, as reflected on his July 2020 and August 2020 billing statements, totaling \$136.87 and \$141.86, respectively.

However, the Company advised Mr. Madden that these promotional discounts would likewise expire at which time standard rates for the services would apply.

On September 29, 2020, Complainant filed a Reply to the Motion to Dismiss, asserting that Charter Spectrum does provide regulated services under South Carolina law and unfairly targets the disabled, retired, and those otherwise receiving a fixed income.

On October 2, 2020, Charter Spectrum filed Respondents' Reply to Complainant's Response to Respondents' Motion to Dismiss, requesting that the Commission grant its Motion to Dismiss without oral argument for lack of subject matter jurisdiction. Charter Spectrum reiterated its position that the bill increases Mr. Madden complains of pertain to his Spectrum TV service. At no time did Complainant's voice service increase.

The Company asserts it has been transparent in its billing for video, internet, and television services. Mr. Madden's May 2020 bill advised, "This promotion is coming to an end beginning with next month's statement"; the June 2020 bill advised, "[T]he promotional period for one or more of your services has now come to an end"; and the July 2020 bill advised of increases to Spectrum TV charges, specifically Spectrum TV Select and the Broadcast TV surcharge.

On October 5, 2020, Mr. Madden filed a Motion to Amend Complaint, claiming Charter Spectrum applied "certain bogus charges" that "stem from a so called Broadcast Surcharge Fee." Complainant then cited generally to the Cable Television Consumer Protection and Competition Act of 1992.

On October 7, 2020, Charter Spectrum filed Respondents' Motion to Strike Complainant's Surreponse and to Dismiss Amended Complaint. The Company moved to strike Complainant's surreponse because surreponses to a moving-party's reply to a

response to a motion are not provided for under Commission regulations or the South Carolina Rules of Civil Procedure. Charter Spectrum also moved to dismiss the Amended Complaint because it reinforces the Company's position that this dispute relates exclusively to charges for Spectrum TV cable television services that are not regulated by the Commission.

### **III. LAW**

The Commission possesses only the authority given it by the legislature. *S.C. Cable Television Ass'n v. Pub. Serv. Comm'n*, 313 S.C. 48, 437 S.E.2d 38 (1993). The Commission is authorized to "supervise and regulate the rates and service of every public utility in this State . . ." S.C. Code Ann. § 58-3-140(A) (2015). Public utility means telephone utility as defined in § 58-9-10:

persons and corporations, their lessees, assignees, trustees, receivers or other successors in interest owning or operating in this State equipment or facilities for the transmission of intelligence by telephone for hire, including all things incident thereto and related to the operation of telephones.

*See also* S.C. Code Ann. §§ 58-3-5(6) (2015) and 58-9-10(6) (2015).

The Commission must dismiss a complaint where it lacks subject matter jurisdiction. *See In Re: Ms. Karen Million, Complainant, vs. Duke Power, Respondent*, Order No. 2003-116, Docket No. 2002-401-E (Mar. 5, 2003) ("Even though this Commission is not a Court, it acts as a deliberative body in certain areas, and therefore would be equivalent to a Court for purposes of the question of subject matter jurisdiction.").

### **IV. DISCUSSION**

Billing records reflect Complainant purchases cable television/video, internet, and voice services from Charter Spectrum. It is apparent that Complainant takes issue with the

charges for the television/video portion of the bill reflected on the bill as “Spectrum TV.” A review of the bill also indicates that the bill was subject to a promotional discount and a notice on the June 2020 bill that the promotional discount ended.

South Carolina Code Ann. § 58-3-140(A) limits the Commission’s powers and jurisdiction to rates charged by “public utilities.” Providers of cable television services are not included in the definition of “public utilities” subject to the Commission’s jurisdiction. Therefore, providers of cable television services are not “regulated public utilities” in South Carolina and cable television services are not regulated services. Because cable television providers are not public utilities under South Carolina law, these companies are not subject to the jurisdiction of the Commission. S.C. Code Ann. § 58-3-5(6) (2015).

Charter Spectrum is a cable operator and broadband communications service company providing video, internet, and voice services to customers through its affiliated corporate entities. The Defendant/Respondent is not a regulated telecommunications utility subject to Commission’s jurisdiction, and therefore, is not identified as a regulated telecommunications entity. The Commission lacks authority and subject matter jurisdiction over Mr. Madden’s Complaint. Accordingly, the Motion to Dismiss should be granted.

Based upon granting the Motion to Dismiss for lack of subject matter jurisdiction, the Commission does not need to resolve the issues related to the Motion to Amend Complaint filed by Mr. Madden or the Motion to Strike the Complainant’s Surreponse and to Dismiss the Amended Complaint filed by Charter Spectrum.

## **V. FINDINGS OF FACT**

1. The Commissions finds that Mr. Madden purchases video, internet, and voice services from Charter Spectrum (Charter Communications, LLC) (Charter Fiberlink-SC CCO, LLC).

2. The Commission finds that Charter Communications, LLC is not a regulated telecommunications utility subject to the Commission's jurisdiction.

3. The Commission finds that Charter Fiberlink-SC CCO, LLC did not provide regulated utility services to Mr. Madden at any time relevant hereto.

4. The Commission finds that it lacks authority and subject matter jurisdiction over Mr. Madden's Complaint.

5. The Commission finds there are no active issues to be resolved related to the Motion to Amend the Complaint filed by Mr. Madden or the Motion to Strike the Complainant's Surreponse and to Dismiss the Amended Complaint filed by Charter Spectrum as the Commission lack authority and subject matter jurisdiction.

## **VI. CONCLUSIONS OF LAW**

1. The Commission concludes that Charter Communications, LLC is not subject to the Commission's jurisdiction. S.C. Code Ann. §§ 58-3-5(6) (2015), 58-3-5(6) (2015), and 58-9-10(6) (2015).

2. The Commission concludes that it lacks authority and subject matter jurisdiction over this Complaint. S.C. Code Ann. § 58-3-140(A) (2015).

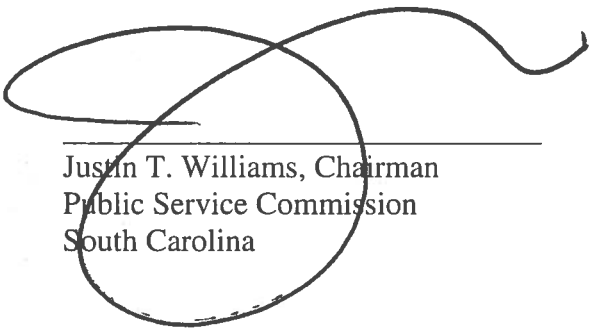
## **VII. ORDERING PROVISIONS**

### **IT IS THEREFORE ORDERED THAT:**

1. The Motion to Dismiss filed by Charter Communications, LLC is hereby granted for lack of subject matter jurisdiction.
2. Upon granting the Company's Motion to Dismiss for lack of subject matter jurisdiction, there are no active issues to be resolved related to the Motion to Amend the Complaint filed by Mr. Madden or the Motion to Strike the Complainant's Surreponse and to Dismiss the Amended Complaint filed by Charter Spectrum as the Commission lacks subject matter jurisdiction in this proceeding.
3. This Order shall remain in full force and effect until further order of the Commission.

**BY ORDER OF THE COMMISSION:**



  
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Justin T. Williams, Chairman  
Public Service Commission  
South Carolina